

REMARKS/ARGUMENTS

The Examiner is thanked for the clarity and conciseness of the previous Office Action, and for the citation of references, which have been studied with interest and care.

This Amendment is in response to the Office Action mailed September 21, 2004.

In the Office Action, claims 1, 4-15, 18-29, 32-43 and 46-55 stand rejected under 35 U.S.C. § 102, and claims 2, 3, 16, 17, 30, 31, 44, and 45 stand rejected under 35 U.S.C. § 103.

Applicant has amended independent claims 1, 15, 29, and 43 to further clarify the embodiments of the invention. Applicant has canceled claims 4, 5, 18, 19, 32, 33, 46, and 47, without prejudice.

Reconsideration in light of the amendments and remarks made herein is respectfully requested.

Rejection Under 35 U.S.C. § 102

Claims 1, 4-15, 18-29, 32-43 and 46-55 stand rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by U.S. Patent No. 6,580,452 issued to Gangitano.

As set forth in MPEP §2131:

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference.” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). . . .”The identical invention must be shown in as complete detail as contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

Applicant has amended independent claims 1, 15, 29, and 43 such that they all include limitations directed to *determining a service level of the digital television broadcast signal based upon a loss of data packets from the data stream wherein determining a service level includes measuring a number of data packets of the data test stream received in a predetermined interval and determining a data packet loss percentage value for the data test stream by calculating a*

ratio of the measured number of data packets received and a number of data packets that should have been received and displaying the service level.

Applicant respectfully submits that Gangitano nowhere teaches or suggests each and every limitation as set forth in the amended claims, nor does it teach the identical invention, in as complete detail, as contained in the amended independent claims. Therefore, anticipation is not present.

Applicant respectfully disagrees with the Office Action's assertions as to what Gangitano teaches. To begin with, Gangitano does not teach a service level determiner, but instead, teaches a signal strength detector.

As set forth in Gangitano, Gangitano teaches: receiver 14 may include a signal strength detector...signal strength detector is configured to sample the received signal presented from antenna 12 and determine a relative signal strength...techniques for computing a signal strength are well known in the art and typically involve the computation of a time average measure of the magnitude of the received signal. (Column 3, lines 9-15, emphasis added).

Thus, Gangitano does not teach or suggest *a service level determiner* but instead teaches a signal strength detector 22.

This is the very type of prior art that Applicant's claimed invention improves upon.

As set forth in page 6 of Applicant's Background section of Applicant's patent application, Applicant describes: prior solutions include using "signal strength" and signal/noise (carrier/noise) ratios...for example, most satellite receivers use "signal strength" to identify the best antenna position...however, just because the best signal is found, this does not necessarily mean that the "best service level" has been found...they only measure signal strength and not true transport quality...accordingly, they do not directly measure the actual data packet error rate and thus the true service level.

In order to remedy these deficiencies, Applicant's claimed invention relates to determining a service level of the digital television broadcast signal based upon a loss of data

packets from the data test stream wherein determining the service level includes measuring a number of data packets of the data test stream received over a predetermined interval and determining a data packet loss percentage value for the data test stream by calculating a ratio of the measured number of data packets received and a number of data packets that should have been received.

In this way, as set forth on page 22 of Applicant's patent application: the present invention provides an advantage in that it provides an objective measure for the user to be sure that they are indeed getting the "best service level" (i.e. that the greatest amount of data packets of the data test stream of the digital television broadcast signal are actually being received) to ensure that the user obtains the best delivery of video, audio, or other data components possible from the digital television broadcast signal...Furthermore, because the present invention directly measures the actual data packet loss (i.e. the error rate) of the data test stream, a "true" service level is displayed to the user.

Gangitano quite clearly does not teach or suggest the limitations of amended independent claims 1, 15, 29, and 43 nor does it provide the advantages that flow therefrom.

Although the Examiner cites various sections of Gangitano such as column 2, lines 45-50 and 56-65, these only relate to measuring signal strength and do not teach or suggest the limitations of Applicant's amended independent claims.

For example, column 2 of Gangitano relates to when antenna 12 is aligned in an optimal position, the signal presented to receiver 14 from antenna 12 will have a maximum received signal strength. Again this relates to measuring signal strength and does not teach or suggest Applicant's novel and non-obvious limitations related to *determining a service level*.

In column 3, lines 22-27, Gangitano teaches that the signal strength information is displayed as a bar graph on TV 20...It will be appreciated that in such an embodiment, the signal strength detector 22 generates a signal indicative of the received signal strength and that the signal is subsequently converted to video information for display on TV 20. (emphasis added).

In fact, Gangitano teaches that techniques for computing a signal strength are well known in the art and typically involve a computation of a time averaged measure of the magnitude of the received signal. (Column 3, lines 12-15).

Thus, Gangitano only relates to prior art techniques related to signal strength detection and does not relate to Applicant's claim limitations directed to *determining a service level by measuring a number of data packets of the data test stream received over a predetermined interval and determining a data packet loss percentage value for the data test stream by calculating a ratio of the measured number of data packets received and a number of data packets that should have been received.*

Nowhere in Gangitano can Applicant find a teaching or suggestion for these limitations.

As held in *Paperless Accounting, Inc. v. Bay Area Rapid Transit System*, 804 F.2d 659, 665, 231 USPQ 649, 653 (Fed. Cir. 1986): [A] § 102(b) reference must sufficiently describe the claimed invention to have placed the public in possession of it...[E]ven if the claimed invention disclosed in a printed publication, that disclosure will not suffice as prior art if it was not enabling..." See also, *Akzo N.V. v. U.S.I.T.C.*, 808 F.2d 1471, 1479, 1 USPQ2d 1242, 1254, (Fed. Cir. 1986) ("the prior art reference must be enabling").

Quite clearly, Gangitano does not teach or suggest Applicant's amended independent claim limitations nor is it enabling as to these limitations.

Further, as set forth by the Federal Circuit reliance merely on "common knowledge" and "common sense" does not fulfill the PTO's obligation to cite references to support an obviousness conclusion, as the PTO must document its reasons on the record to allow accountability and effective appellate review. *In re Lee*, 61 USPQ2d 1430, 1435 (Fed. Cir. 2002)

If the Office Action disagrees with the Applicant, and believes that such knowledge as claimed by Applicant is common knowledge, in accordance with MPEP § 2144.03, Applicant respectfully requests that a reference be cited in support of the Office Action's position.

Thus, as outlined above, Applicant's amended independent claims 1, 15, 29, and 43, are not taught or suggested by Gangitano, nor any of the other references alone or in combination with Gangitano, and Applicant respectfully requests that these claims be allowed. Further, as to the dependent claims which are dependent from allowable base claims, Applicant respectfully requests that these claims be allowed as well.

Conclusion

In view of the remarks made above, it is respectfully submitted that pending claims 1-3, 6-17, 20-31, 34-45, and 48-55 define the subject invention over the prior art of record. Thus, Applicant respectfully submits that all the pending claims are in condition for allowance, and such action is earnestly solicited at the earliest possible date. The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application. To the extent necessary, a petition for an extension of time under 37 C.F.R. is hereby made. Please charge any shortage in fees in connection with the filing of this paper, including extension of time fees, to Deposit Account 02-2666 and please credit any excess fees to such account.

Respectfully submitted,

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Dated: 1/4/2005

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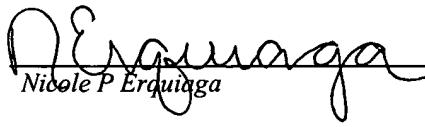
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